

Remarks

Reconsideration is requested in view of the following remarks.

I. Status of claims

Claims 37-39, 55, 62-64 and 70 have been amended. Claims 37-39, 55, 62-65 and 70 remain pending.

II. Interview

Applicants would like to thank the Examiner for the telephone interview conducted on December 3, 2003 with the undersigned. During the interview, the rejection of the claims in view of Cox (US 3,120,842) was discussed, and Applicant's representative explained how the claims distinguished over Cox. No agreement was reached concerning the allowability of the claims.

III. Discussion of claim amendments

Claims 37 and 38 have been rewritten into subparagraph form to improve the form of the claims, and to make other improvements to the form of the claim.

Claim 37 has also been amended to recite the plurality of projections as a "first plurality of projections". This amendment modifies the terminology used to recite the projections and is grammatical in nature.

Claim 37 has also been amended to recite that the first plurality of projections are positioned to engage the workpiece and break away portions of the workpiece during the splitting operation. The splitting operation language is consistent with the language used in the preamble of claim 37.

In addition, claim 37 has been amended to recite that during activation the one or more splitting members engage and split the workpiece and the first plurality of projections engage and break away portions of the workpiece. This amendment is supported by the original specification, for example page 12, lines 15-18 and page 14, lines 15-17.

Claim 38 has been amended to recite the plurality of projections of the second splitting assembly as a "second plurality of projections". This amendment modifies the terminology used

to recite the projections and is grammatical in nature. The other amendments to claim 38 are to improve the form of the claim.

Claims 37 and 38 have also been amended by replacing the word "masonry" with "concrete". This change is supported by the original specification, for example page 4, lines 11-12. This change was made to clarify that the invention is not limited to a method of producing blocks that are laid up using mortar between the blocks, as may be implied by the word "masonry". As described over pages 1-4 of the specification, the invention also applies to retaining wall blocks, including those having integral locating flanges, such as the flange that is shown on the bottom surface of the blocks illustrated in the application. Retaining wall blocks, including those with integral locator flanges, are simply dry stacked in ascending courses and do not require the use of mortar to secure the blocks together. While the National Concrete Masonry Association calls retaining wall blocks "concrete masonry units" on its website, other websites use "masonry" blocks only to denote blocks that are laid up using mortar.

Claims 39 and 62-64 have been amended as a result of the amendments to claims 37 and 38.

Claim 70 has been amended to recite that the one or more splitting members comprise a plurality of projections separate from the first plurality of projections. This amendment is supported by the original specification, for example page 8, lines 19-20; page 10, lines 3-5 and 23-25; and page 11, line 17.

IV. Applicants' invention

Independent claim 37 recites a method of producing a concrete block. The method includes providing a first block splitting assembly that has one or more splitting members positioned to define a splitting line and to engage a concrete workpiece and split it, and a first plurality of projections that are adjacent the one or more splitting members on at least one side thereof. The projections are positioned to engage the workpiece and break away portions of the workpiece during the splitting operation. Further, during activation of the splitting assembly, the one or more splitting members engage and split the workpiece and the plurality of projections engage and break away portions of the workpiece.

V. Rejection under 35 USC 103(a)

Claims 37-39, 55, 62-64 and 70 are rejected under 35 USC 103(a) as being unpatentable over US Patent 3,120,842 to Cox et al (Cox). Applicants respectfully traverse this rejection and reconsideration is requested in view of the following.

Cox discloses a shearing apparatus 10 that is designed to apply equalized shearing pressure across the slab 24 to be sheared (i.e. split) despite irregularities in the surface of the object (see, e.g., column 1, lines 8-13; column 2, lines 43-46). The apparatus 10 includes jaw assemblies 16, 18, each of which comprises a plurality of cutter bits 60 (see, e.g., column 3, lines 37-41). Each cutter bit 60 comprises a stem 62, a piston 70 connected to one end of the stem 62, and a cutting element 80 connected to the end of the stem 62 opposite the piston 70 (see, e.g., column 3, lines 41-72). The cutting elements 80 are disposed side-by-side, and are individually movable relative to one another (see, e.g., column 3, line 73 to column 4, line 1). The result is that the cutting elements define a single knife edge along the cutting face of each jaw assembly 16, 18, so that the pressure is equalized at the desired line of shearing of the slab 24 and a uniform pressure is maintained throughout the entire length of the line upon which the slab 24 is to be sheared (see, e.g., column 1, lines 44-50; column 4, lines 1-3).

The rejection characterizes elements 60, 70 of Cox as splitting members, and the elements 80 as projections. However, the elements 60, 70 of Cox do not engage the slab 24 and do not shear (i.e. split) the slab 24 along the line of shearing. The only elements of Cox that are disclosed as engaging the slab 24 are the cutting elements 80 (see, e.g., column 4, lines 17-30). The position of the elements 60, 70 in Cox is such that they are not intended to engage the slab 24, and would not engage the slab 24, during normal operation.

In addition, the elements 60, 70 of Cox are aligned along the line of shearing as are the cutting elements 80. Therefore, Cox does not disclose a plurality of projections adjacent the splitting line on at least one side thereof.

During the above-referenced interview, the Examiner suggested that the word "engage" as used in "one or more splitting members positioned to...engage a masonry workpiece" was broad enough to read on the action of the elements 60, 70 in Cox. The Examiner suggested using

the word "contact" in place of "engage" to more definitively recite that the one or more splitting members and projections contact the workpiece.

Claim 37 recites the one or more splitting members positioned to engage the concrete workpiece and split it generally along the splitting line. Therefore, the one or more splitting members not only engage the workpiece, they also split the workpiece. The elements 60, 70 in Cox do not engage the slab and do not shear the slab generally along the shearing line. In Cox, the elements 80 engage the slab and shear or split it along the shearing or splitting line. Therefore, during activation of shearing apparatus 10 of Cox, the elements 60, 70 do not engage the slab and split it. Further, in Cox, there are no projections adjacent the shearing or splitting line. Therefore, during activation of the shearing apparatus 10 of Cox, there are no projections that engage the slab and break away portions of the slab.

The Examiner also suggested during the above-referenced interview that the structural relationship between the splitting line and the projections was unclear because the splitting line is not a positive structural element. Applicants note that there is not a rejection in the current office action that indicates that the claim language is unclear. However, even if such a rejection were made, the claim language is definite.

Applicants are permitted to use claim language of their own choosing as long as the metes and bounds of the invention being claimed is clear. In re Swinehart, 439 F.2d 210 (CCPA 1971); MPEP 217301. The splitting line is a feature that is clearly supported by the original disclosure (see, e.g., page 10, lines 1-7). Applicants have chosen to use the splitting line to define the claimed invention. The use of splitting line is similar to reciting an element as rotating about a rotational axis, or defining any element of a claim relative to an axis of another element. The use of this type of claim language is clearly permitted.

For at least these reasons, claim 37, along with claims 38-39, 55, 62-64 and 70 depending therefrom, are patentable over Cox. Withdrawal of the rejection is requested.

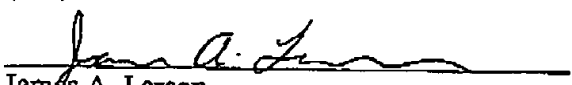
VI. Conclusion

Applicants believe that the claims now pending in this patent application are in immediate condition for allowance. Favorable consideration is respectfully requested. If any further questions arise, the Examiner is invited to contact Applicant's representative at the number listed below.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: February 9, 2004


James A. Larson
Reg. No. 40,443

